

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

|   |   |                                   |
|---|---|-----------------------------------|
| <b>Avista Corporation;</b>                | ) |                                   |
| <b>The Montana Power Company;</b>         | ) |                                   |
| <b>Nevada Power Company;</b>              | ) | <b>Docket No. RT01 - ____-000</b> |
| <b>Portland General Electric Company;</b> | ) |                                   |
| <b>Puget Sound Energy, Inc.; and</b>      | ) |                                   |
| <b>Sierra Pacific Power Company</b>       | ) |                                   |

**ORDER NO. 2000 COMPLIANCE FILING  
AND  
PETITION FOR DECLARATORY ORDER**

In compliance with Order No. 2000,<sup>1</sup> and pursuant to Rule 207(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.207(a)(2) (2000), the undersigned parties<sup>2</sup> (collectively "Applicants") hereby submit a proposal for formation of an independent transmission company (ITC) comprising TransConnect, LLC and TransConnect Corporate Manager, Inc. that will own and operate the interstate transmission assets presently owned and operated by each of the Applicants.<sup>3</sup>

---

<sup>1</sup> *Regional Transmission Organizations*, Order No. 2000, 65 Fed. Reg. 809 (January 6, 2000), FERC Stats. & Regs. ¶ 31,089 (1999), *order on reh'g*, Order No. 2000A, 65 Fed. Reg. 12088 (March 8, 2000), FERC Stats. & Regs. ¶ 31,092 (2000), *review pending sub nom.*, *Public Utility Dst. No. 1 of Snohomish Cty., WA v. FERC*, Nos. 00-1174, *et al.* (D.C. Cir.)

<sup>2</sup> The Applicants are: Avista Corporation, The Montana Power Company, Nevada Power Company, Portland General Electric Company, Puget Sound Energy, and Sierra Pacific Power Company.

<sup>3</sup> The TransConnect, LLC and TransConnect Corporate Manager, Inc. names have been registered in the State of Delaware. It is anticipated that TransConnect Corporate Manager, Inc. would be a holding company as defined in Section 2 of the Public Utility Holding Company Act (continued...)

TransConnect, LLC will in turn participate as a transmission owner within RTO West, a regional transmission organization (RTO) that plans to operate in the Western United States. In addition to participating in the instant proposal, the Applicants have been, and continue to be, actively engaged in the development of RTO West.

## **REQUEST FOR EXPEDITED CONSIDERATION**

### **I.**

In order to commit to the process necessary to implement the proposed ITC and effectuate the transfer of over \$1 billion of transmission assets within the time frame set forth by the Commission, the Applicants respectfully request the Commission to issue a declaratory order on or before December 15, 2000, finding that (1) the proposed ITC will meet or exceed the minimum requirements for independence; and (2) the functions that the ITC proposes to undertake -- related to rate filings and transmission planning and expansion -- are acceptable.

## **EXECUTIVE SUMMARY**

### **II.**

The proposed ITC consists of two interrelated entities: TransConnect, LLC will consist of "Members" who have contributed assets to TransConnect, LLC, with each Member's share determined according to the value of the assets contributed; TransConnect Corporate Manager, Inc. will serve as the "Managing Member" of TransConnect, LLC. TransConnect Corporate Manager, Inc. will initially hold a nominal financial membership interest in TransConnect, LLC. Applicants are hopeful that the ITC can be structured to ensure that it will be fully independent of any market participant, including its predecessor transmission owning, vertically-integrated utilities, and have pursued their discussions with that goal in mind. This filing reflects such an optimum structure, but it should be noted that none of the relevant state Commissions have yet signed off on or endorsed this proposal. Applicants are proposing that TransConnect Corporate Manager, Inc. will be governed by an independent, highly qualified Board of Directors. The governance documents provide that in performing their fiduciary duties, neither the Managing Member or the Board of Directors shall consider the interests that the Members of TransConnect, LLC may have as participants in the electric market served by the ITC.

Attachment A is a TransConnect system map showing the respective transmission systems of each Applicant within the area represented by RTO West. Although these

---

(...continued)

of 1935, 15 U.S.C. §§ 79b (1994), and that TransConnect, LLC would be subject to FERC jurisdiction.

systems are not contiguous, their combined operation will result in significant efficiencies and the potential for future growth that will provide public benefits such as improved reliability and service options for transmission customers. The Applicants have actively collaborated in the development of the RTO West compliance filing.

As a for-profit, transmission-owning entity, TransConnect, LLC will independently file for rates and plan new transmission facilities within the framework being established by RTO West. Applicants, or TransConnect, LLC, will make the filings required by Sections 203 and 205 of the Federal Power Act ("FPA") as necessary to effectuate the ITC no later than the commencement date of RTO West. 16 U.S.C. §§ 824b, 824d (1994). In this regard, the Applicants intend to file a specific rate proposal or proposals to be effective contemporaneously with the start date of the ITC and RTO West. This rate filing will include innovative rate mechanisms as permitted by section 35.34(e) of the Commission's regulations. 18 C.F.R. § 35.34(e) (2000). TransConnect, LLC's rate proposal will be designed to provide just, reasonable, and not unduly discriminatory transmission rates, as well as appropriate incentives to TransConnect, LLC to act as an efficient and effective owner and developer of interstate transmission. There will not be any rate pancaking. RTO West will provide the remaining functions described in Order No. 2000. As TransConnect, LLC and RTO West evolve, there may be additional sharing of characteristics and/or functions, consistent with the Commission's open architecture principles.

The Applicants believe that this ITC proposal is consistent with the Commission's requirements as set forth in Order No. 2000. Applicants are committed to implementing the ITC within RTO West. In order to secure continued support for this process, the Applicants require an order from the Commission at this juncture that their proposal to form an ITC meets the Commission's requirements.<sup>4</sup> The Applicants, therefore, respectfully request the Commission issue a declaratory order finding that:

1. TransConnect Corporate Manager, Inc. and TransConnect, LLC will meet or exceed the minimum requirements for independence; and
2. the limited functions that TransConnect, LLC proposes to undertake -- related to rate filings and transmission planning and expansion -- are acceptable.

---

<sup>4</sup> Applicants acknowledge that the instant proposal, as well as that of RTO West, remain, in some respects, works in progress. Applicants appreciate and recognize that the Commission may not be able to provide definitive rulings on whether the ITC and RTO West have fully satisfied each and every characteristic and function. Applicants respectfully request, however, that the Commission rule on these issues where possible, and, with regard to the instant proposal, provide preliminary guidance where a definitive ruling is not possible. *See, e.g., Entergy Services, Inc.*, 88 FERC ¶ 61,149 (1999), *reh'g denied*, 90 FERC ¶ 61,191 (2000) (declaratory order providing "preliminary guidance" on governance and independence issues). With regard to the independence characteristic, Applicants seek a definitive ruling that the proposed ITC meets the criteria for independence.

Prompt Commission consideration of this petition is requested. However, Applicants reserve the right to reconsider the instant proposal and the manner of their participation in RTO West (or some other RTO) should the Commission modify or reject the proposals contained herein, or due to any economic, operational or commercial reasons that may become apparent as the ITC and RTO West developmental process unfolds. Many of the necessary documents and regulatory approvals have not yet been fully developed, filed for, or obtained.<sup>5</sup> Ultimately, whether or not to join TransConnect, LLC will be a business decision that must be made by the management of each company based on its individual economic and business evaluation of the ITC proposal in its entirety. This reservation of a final decision by the managements of the Applicants to transfer of over \$1 billion in assets is prudent and reasonable in these circumstances. It is not intended to diminish the importance of the instant filing, or the need for prompt Commission action to begin the process that will permit a comprehensive economic evaluation and business decision regarding the ITC proposal before the scheduled implementation date.<sup>6</sup>

### **HISTORY AND BACKGROUND**

#### **III.**

Applicants are vertically integrated, investor-owned utilities operating transmission facilities in the States of Idaho, Montana, Nevada, Oregon, Washington, and California. *See* Attachment A. Along with other transmission owning entities in the region, including Bonneville Power Administration (BPA), Idaho Power Company, and PacifiCorp, Applicants considered creation of a single regional transmission grid operator even prior to Order No. 2000. Although past attempts, such as IndeGO, have been unsuccessful, those discussions helped pave the way for the negotiations that are now leading to RTO West. The Applicants have participated extensively in the RTO West formation process.

During the discussions leading up to the formation of RTO West, the Applicants, along with Idaho Power Company, BPA, and PacifiCorp (collectively the “RTO West Filing Utilities”) debated (1) whether a for-profit or not-for-profit entity would be best suited to operating, maintaining and improving the transmission grid, and (2) whether vertically integrated utilities should divest transmission assets into a truly independent entity which does not participate in the power market. The debate was resolved by Applicants agreeing to form a for-profit ITC that would participate within the larger not-for-profit RTO. This structure will allow Applicants to contribute transmission assets to

---

<sup>5</sup> For example, operational issues relating to the disaggregation and unbundling of the ITC from the distribution portions of the ITC members have yet to be resolved.

<sup>6</sup> This reservation is not intended to limit or modify any commitment that a signatory to this filing has made with respect to RTO membership in any other proceeding pending before this Commission.

TransConnect in order to preserve and enhance their value, while still participating in formation of a geographically large RTO.

TransConnect, LLC will have correctly-aligned, healthy, long-term incentives to operate efficiently and reliably, and to improve and expand its transmission facilities. By aggregating the transmission assets currently held by Applicants, TransConnect, LLC will be able to achieve economies of scale. Moreover, as a pure transmission company with sizable assets, TransConnect Corporate Manager, Inc. may be able to attract capital that might not otherwise be available for system improvements or expansions.

#### **DESCRIPTION OF PROPOSAL**

#### **IV.**

##### **A. Structure and Governance**

The ITC will consist of a limited liability company (TransConnect, LLC) with “Members” that currently comprise the Applicants to this filing, and a separate corporation (TransConnect Corporate Manager, Inc.) that will act as the Managing Member of TransConnect, LLC.<sup>7</sup> The Managing Member initially will have a nominal financial membership interest in TransConnect, LLC, but as Managing Member will have control over TransConnect, LLC policy and procedure. The following *pro forma* governance documents for both these entities are attached:

Attachment B: TransConnect Formation Plan

Attachment C: Limited Liability Company Operating Agreement for TransConnect, LLC

Attachment D: Certificate of Incorporation of TransConnect Corporate Manager, Inc.

Attachment E: By-Laws of TransConnect Corporate Manager, Inc.

Attachment F: Member and Stockholder Agreement

Attachment G: Subscription Agreement and Voting Trust Agreement

Attachment H: Standards of Conduct

The Formation Plan describes the specific steps that will be undertaken by the Applicants to effectuate the ITC. In addition to detailing the formation of TransConnect, LLC and TransConnect Corporate Manager, Inc., the Formation Plan also provides for the establishment of an independent Board Selection Committee charged with selecting the initial slate of directors for TransConnect Corporate Manager, Inc. and appointing an

---

<sup>7</sup> The Applicants have discussed membership with other transmission owning entities in the Western region. Should the membership expand, Applicants will make additional or amendatory filings as appropriate.

independent Compliance Auditor The membership of the Board Selection Committee, its rules and selection process, and the Director Qualifications are designed to provide TransConnect with a high-quality, independent Board of Directors. The independent Compliance Auditor will ensure that the limitations on stock ownership and the director, officer and employee independence requirements are fully satisfied.

The Limited Liability Company Operating Agreement is an agreement among the Members of TransConnect, LLC. The Members comprise those utilities who contribute assets to TransConnect, LLC, and the Managing Member. Other than the Managing Member, each Member will receive an interest in TransConnect, LLC in proportion to the value of each Member's transmission system to the aggregate value of the transmission systems of all Members. The Members will comprise a Membership Committee that will meet only when called by the Managing Member or by Members holding at least 70 percent of the total outstanding interests in TransConnect, LLC. Meetings shall be only for the purpose of seeking the approval or consent of the Members on those limited matters provided for in the LLC Operating Agreement. In addition to the right to vote on any matters required by the Delaware Limited Liability Company Act, and limited other matters upon which the Members may vote on as set forth in the LLC Operating Agreement, Members are entitled to vote on the following matters:

1. any proposal by the Company to (a) convert the Company into an entity other than a limited liability company, (b) enter into any transaction that would result in a change of control of the Company, (c) sell, transfer, lease, exchange or otherwise dispose of all, or substantially all, of the assets of the Company (other than pursuant to a mortgage or security interest entered into in connection with a financing of the Company's business), (d) merge or consolidate with or into any other entity or (e) take any action that would preclude a Member from using the equity method of accounting for its investment in the Company. A "change of control" as applied herein to the Company shall be deemed to have occurred if, following the consummation of any transaction, less than fifty percent (50%) of the outstanding Percentage Interests of the Company (or any successor entity resulting from such transaction) is held by those holders of the Percentage Interests of the Company immediately prior to the consummation of such transaction;
2. any acquisition or business development opportunity that is otherwise permissible under Sections 2.3 and 9.1(c) of [the LLC Operating Agreement] but is not directly or indirectly related to the provision of electric transmission service, including but not limited to the formation and administration of electric markets, or other services or functions that are commonly performed by independent transmission companies participating in an RTO;
3. any proposal to (a) institute proceedings to have the Company adjudicated bankrupt or insolvent, (b) consent to the institution of bankruptcy or insolvency

proceedings against the Company, (c) file a petition seeking a reorganization of the Company under federal or state bankruptcy laws, (d) consent to the appointment of a receiver or trustee for the Company, or (e) make an assignment for the benefit of creditors of the Company; and

4. any proposal to amend the Approval Terms or the Economic Terms of [the LLC Operating Agreement].

Section 7.2 of the LLC Operating Agreement provides that the Managing Member will prepare and periodically send to each Member financial reports. This section also requires Member notification of any *bona fide* proposals to acquire the company or any significant portion thereof or any proposal involving a change of control of the Company. Section 7.2 also permits Members to request information necessary for them to comply with applicable financial reporting requirements.

The Certificate of Incorporation and the By-Laws of TransConnect Corporate Manager, Inc. ("By-Laws") govern the operations of TransConnect Corporate Manager, Inc. As provided in the Certificate of Incorporation, TransConnect Corporate Manager, Inc. shall not be a market participant and shall at no time hold any interest in a market participant in the territory served by RTO West.

The Certificate of Incorporation authorizes TransConnect Corporate Manager, Inc. to issue three classes of common stock (Class A, Class B and Class C) and preferred stock in one or more classes or series. In short, Class A Common Stock has full voting rights and would be issued through the Subscription Agreement, an initial public offering, or private placement. Class B and Class C Common Stock is designed for Members who wish to transfer their membership interest into stock. Class B is for Market Participants; Class C is for non-Market Participants.

The holders of Class A and Class C Common Stock are entitled to full voting rights. The holders of Class B Common Stock have limited voting rights. Shares of Class B Common Stock are obtained by conversion of all or a portion of a Member interest in TransConnect, LLC to ownership of shares of Class B Common Stock. The limited voting rights of holders of Class B Common Stock detailed in Article VI-C and VI-E of the Certificate essentially include the same limited rights as provided to Members under the LLC Operating Agreement, plus the right to vote on any proposal to issue more than twenty percent of any outstanding class or series of securities of TransConnect Corporate Manager, Inc. or any proposal to issue more than ten percent of any outstanding class or series of securities of TransConnect Corporate Manager, Inc. to one or more affiliates of TransConnect Corporate Manager, Inc. (except, in each case, for issuances that are offered on the same terms to all stockholders of TransConnect Corporate Manager, Inc.).

The By-Laws direct the Board of Directors to adopt Standards of Conduct applicable to the Corporate Manager (including its directors, officers and employees) and to TransConnect, LLC. *Pro forma* Standards of Conduct are contained in Attachment H, and reflect strict requirements designed to ensure that Directors, Officers, and employees of TransConnect do not favor any market participant. The Standards of Conduct are modeled on the Code of Conduct proposed to be used for RTO West, as revised to, among other things, eliminate references to functions that will not be performed by TransConnect, LLC.

The Member and Stockholder Agreement sets forth matters governing the relationship between membership interests in TransConnect, LLC and Class B and Class C stock in TransConnect Corporate Manager, Inc., including, among other things, the formula pursuant to which membership interests may be converted into shares of Class B or Class C stock.

The Subscription Agreement and the Voting Trust are interim devices to provide an independent voting mechanism for TransConnect Corporate Manager, Inc. until the consummation of an initial public offering by TransConnect Corporate Manager, Inc., or the sale of shares of Class A Common Stock to private purchasers. The Subscription Agreement provides for an initial purchase of stock by each director. The Voting Trust Agreement provides for establishment of a voting trust among the Board of Directors and the TransConnect Corporate Manager, Inc. permitting the Class A stock owned by the Directors pursuant to the Subscription Agreement to be voted as a unit by the Directors.

## **B. Rates and Tariffs**

TransConnect, LLC will file its own rates and rate schedules, with such rates to be collected by the RTO West Payment Agent in a manner consistent with other RTO West transmission owners. The filing of individual company or zone rates will be consistent with the rate design proposed for RTO West. TransConnect, LLC's initial rates may include performance-based and innovative rate treatments and will include recovery of TransConnect's start-up and ongoing costs. TransConnect, LLC will integrate its rate proposals with those of RTO West, and will, to the extent necessary, seek Commission authorization to include its rates in those proposed by RTO West. Thus, RTO West's transmission customers will be able to do "one-stop shopping" for all transmission service throughout the RTO West grid. This will ensure that transmission customers will be able to seamlessly transact throughout RTO West.



### **1. License Plate Rates**

The RTO West Filing Utilities have agreed to a “Company Rate” mechanism that sets a license plate rate paid by the loads of each filing utility, thus providing non-pancaked access to the entire RTO West grid. This mechanism will be in place until December 15, 2011. Consistent with that agreement, TransConnect, LLC proposes to utilize license plate rates for its system. TransConnect, LLC will make a filing, to be effective no later than commencement of service by TransConnect, LLC, that provides the specific rates it will seek to include within the RTO West rate structure. Initially, consistent with the planned overall RTO West rate design, each system currently owned by the Applicants will be a separate rate zone. This zonal mechanism is intended to minimize cost-shifting between customers of the Applicants. Customers pay only one rate to RTO West – albeit one that varies with the location of the load. TransConnect, LLC may make future filings to alter its rates within this structure (but not the overall rate design) to the extent permitted by the RTO West agreements.

### **2. Innovative Transmission Rate Treatments**

In accordance with section 35.34(e)(4) of the Commission regulations, TransConnect, LLC will propose to establish rates using innovative transmission rate treatments such as:

1. performance-based rates using benchmarked performance criteria;
2. a rate of return that is formulaic, that does not vary with capital structure, and that provides appropriate incentives for participation in TransConnect and RTO West;
3. a fixed capital structure for rate purposes that may not match the evolving capital structure of the company;
4. levelized rates;
5. non-traditional depreciation schedules for new transmission investment; and
6. incremental cost treatment or other innovative rates for new transmission facilities.

TransConnect, LLC’s specific rate proposals will be made in a future filing.

## **DISCUSSION**

### **V.**

TransConnect, LLC is designed to operate as an independent transmission owning company within a larger RTO. As such, TransConnect, LLC will separately reflect some, but not all, of the characteristics and functions of an RTO. In particular, TransConnect, LLC is designed to be independent of influence from market participants, including its member companies. The characteristics and functions defined by the Commission and TransConnect, LLC's proposal in regard to each are discussed below.

#### **A. Characteristics**

##### **1. Independence**

It is TransConnect, LLC's intent to be independent in "both reality and perception."<sup>8</sup> In this regard, each of the issues identified by the Commission as bearing on a finding of independence is addressed below. In addition, TransConnect Corporate Manager, Inc.'s and TransConnect, LLC's *pro forma* governance documents, including *pro forma* Standards of Conduct, are attached for Commission review.

---

<sup>8</sup> Order No. 2000 at 31,061.

**a. Passive Ownership**

TransConnect, LLC's proposal is designed to ensure that the investment of its Members, including the Applicants, meets the Commission's requirements for passive ownership,<sup>9</sup> while also balancing the needs of the passive investors to protect the value and earnings from their investment.<sup>10</sup> The Commission has recognized the need for this delicate balancing of interests, noting "that [it] may require some creativity and innovation to meld the regulatory needs with those of the markets."<sup>11</sup> In this regard, the Commission has identified information it would need to assess whether a particular passive arrangement achieves true independence in decisionmaking.<sup>12</sup> Each item identified by the Commission is addressed below.

Fiduciary Responsibilities. The LLC Operating Agreement contains a provision clarifying that the Managing Member's fiduciary responsibility is not affected by the Members' interests, except in their capacity as investors in TransConnect, LLC. Specifically, Section 9.1(b) of the LLC Operating Agreement provides that:

At all times the Managing Member shall be a fiduciary of the Company and shall act in good faith and in a manner that the Managing Member reasonably believes to be in the best interests of the Company. In managing the business and affairs of the Company, the Managing Member shall perform its duties in a manner consistent with its duties to the Members under [the LLC Operating Agreement]. In performing such duties, the Managing Member shall consider the interests of the Members solely in their capacity as investors in the Company and shall have no duty to consider, and shall not consider, any other interests that the Members may

---

<sup>9</sup> It is possible that a current Applicant may in the future no longer be a market participant, as that term is defined by the Commission. In that circumstance, the ownership and other restrictions on market participants would no longer apply to such Applicant, just as they would not apply to other, non-market participant investors.

<sup>10</sup> The Applicants intend to use the equity method of accounting in transferring assets to TransConnect, LLC and believe that the governance provisions proposed herein are consistent with that goal. The Applicants, however, intend to confirm their understanding that this accounting approach is possible through Applicants' independent accounting firms and the Securities and Exchange Commission. To the extent the outcome of these discussions requires modification to the TransConnect governance provisions, Applicants will immediately notify the Commission or make an amendatory filing, as appropriate.

<sup>11</sup> Order No. 2000-A at 31,366.

<sup>12</sup> Order No. 2000 at 31,065-66.

have in any business, asset or liability, including any Members' interests as participants in the electric markets served by the Company.<sup>13</sup>

A similar fiduciary restriction applies to the Board of Directors.<sup>14</sup> The limits expressed in these provisions will enhance the independence of the Managing Member.<sup>15</sup>

Ability to Raise Capital and to Make Investment and Financing Decisions.

TransConnect Corporate Manager Inc.'s and TransConnect, LLC's governance and financial structure will permit it to independently raise capital and to make necessary investment and financing decisions. Specifically, the Managing Member may issue stock or securities to finance investment in new transmission plant. Passive owners will have no control over issuance of new membership interests and/or equity, unless, as described above, such changes would result in a change of control, or any proposal by TransConnect Corporate Manager, Inc. to issue more than twenty percent of any outstanding class or series of securities of TransConnect Corporate Manager, Inc. or any proposal to issue more than ten percent of any outstanding class or series of securities of TransConnect Corporate Manager, Inc. to one or more affiliates of TransConnect Corporate Manager, Inc. (except, in each case, for issuances that are made on the same terms to all stockholders of TransConnect Corporate Manager, Inc.). In addition, pursuant to Section 6.1 of the LLC Operating Agreement, the Managing Member has

---

<sup>13</sup> Section 9.1(b) of the LLC Operating Agreement (emphasis added).

<sup>14</sup> Article VII-I of the Certificate of Incorporation

<sup>15</sup> See, e.g., Order No. 2000-A at 31,366 ("we do not expect that a fiduciary responsibility of the RTO to its passive owners to maximize the value of the RTO's transmission assets would, by itself, be problematic with respect to the RTO's independence.")

discretion to retain a specified percentage of the cash remaining after making distributions to cover the Members' tax obligations associated with their equity interest, operating expenditures, and other deductions. These retained earnings could also be used to internally finance new investment or improvements in the electric transmission grid.

Board of Directors Selection and Removal. The Formation Plan ensures that TransConnect, LLC's Members will have no ability to independently determine or to veto either the initial slate of candidates for the Board of Directors, or the subsequent selection or removal of directors. The Members will be one of five classes on the Board Selection Committee: the Members' class will have two votes; the other four classes will each have one. Since it will require four votes out of a total of six for a majority, the Members cannot either control the outcome or unilaterally veto a potential board member.

The Board Selection Committee will retain one of three specified, nationally recognized search firms to propose to the Board Selection Committee 15 candidates for election as initial directors of TransConnect Corporate Manager, Inc. Candidates must satisfy a rigorous list of qualifications set forth in Section 3.4 of the Formation Plan. The search firm shall also propose three candidates to serve as the Chief Executive Officer ("CEO") of TransConnect Corporate Manager, Inc. From the pool of director candidates, the Board Selection Committee shall select by the vote of two-thirds of its members eight candidates as the slate of candidates for election as initial directors of TransConnect Corporate Manager, Inc. The Board Selection Committee shall then require such candidates to meet and select an individual who satisfies the independence requirements

of the Certificate of Incorporation and the By-Laws to serve as the initial CEO. The CEO shall also be elected a director. Board members will have staggered three-year terms, with subsequent directors selected either by the Board pursuant to the Voting Trust, or by Class A and Class C Stockholders. This process should ensure that both the initial and subsequent Boards of Directors are independent of Market Participants.

Members have no independent right to remove directors. Pursuant to Article VII.E of the Certificate of Incorporation, subject rights of preferred stockholders not applicable in this context, directors can be removed only for cause and only by the affirmative vote of the holders of at least a majority of the voting power of the Corporation's then outstanding capital stock entitled to vote generally in the election of directors.

Control Over Rates, Terms and Conditions. Passive owners will have no control over the rates or transmission facilities of TransConnect, LLC. Although Applicants will be proposing TransConnect, LLC's initial rate structure and terms and conditions, this participation will end when TransConnect, LLC becomes operational.<sup>16</sup>

Control Over Issuance of New Membership Interests and/or Equity. Passive owners will have no control over the ability of the Managing Member to accept new membership interests or to issue new equity, unless such an action triggers one of the limited voting rights retained by the Members. These limited voting rights are further discussed below.

---

<sup>16</sup> Any rates that may later be proposed by TransConnect will be consistent with the agreements reached as part of the RTO West and TransConnect formation, including the requirement that the license plate rate design remain in effect through December 15, 2011.

Services Provided by Passive Owners or their Employees. Pursuant to Section 9.3(a) of the LLC Operating Agreement, the Managing Member may employ or engage a passive owner to provide some services to TransConnect, LLC. This may be especially needed at the beginning of TransConnect, LLC's operations. As further provided in Section 9.3, however, such employment must be consistent with the Standards of Conduct, thus minimizing any potential conflicts related to such employment.

Access to Information Not Available to Other Market Participants. Section 7.2 of the LLC Operating Agreement provides that the Managing Member will prepare and periodically send to each Member financial reports and will notify members of any *bona fide* proposals to acquire the company or any significant portion thereof or any proposal involving a change of control of the Company. Members also may request information necessary for them to comply with applicable financial reporting requirements. This information is not intended to give the Members a competitive advantage, but solely ensures they have the information needed to monitor and protect their investment.

Other Relevant Information. As part of the balancing of their passive interest and the need to protect their investment and to qualify for appropriate accounting treatment, Members and Class B stockholders are accorded certain limited voting rights. These limited voting rights have been carefully circumscribed and, in essence, are the minimum rights the Applicants consider necessary to ensure the basic structure of the proposed ITC is not altered in a way that would adversely affect their economic interests as passive owners and to ensure appropriate accounting treatment. For example, the right to vote on

the issuance of more than ten percent of a class or series of securities to an affiliate of TransConnect Corporate Manager, Inc. would forestall potential affiliate self-dealing that could also adversely impact the economic interests and rights of the passive owners. The rights to vote in situations involving bankruptcy or changes of control similarly bear on fundamental economic interests necessary to preserve the value of their investment without restraining the independence of Managing Member over operational, investment, or other decisions key to its independent operation. Applicants request the Commission consider this careful balancing of interests in evaluating the voting rights retained by the passive owners.

The Board Selection Committee will also select an independent Compliance Auditor “to ensure that what is passive on paper is passive in reality.”<sup>17</sup> The independent Compliance Auditor will be an additional deterrent to any abuse by passive or active owners, or other market participants. Consistent with Order No. 2000, the Compliance Auditor shall conduct an initial audit of the passive ownership arrangements of the Corporate Manager and TransConnect, LLC within two years following the incorporation of TransConnect Corporate Manager, Inc., and every three years thereafter. The Compliance Auditor shall have the right to report any findings and recommendations to the Commission without prior approval of the Managing Member or other Members of TransConnect, LLC, but shall request confidential treatment of any such reports to the extent they include or are based on confidential corporate or personal information or data.

---

<sup>17</sup> Order No. 2000 at 31,067.



The Compliance Auditor shall also have authority to obtain the information or data necessary to perform these audits.

In sum, the ITC's governance has been crafted in an effort to ensure it will have the independence required by the Commission while also providing the minimum protections required by investors.

**b. Active Ownership**

The governance documents contain limitations on active ownership the Commission has determined are necessary to ensure that TransConnect is independent of influence by any market participant.<sup>18</sup> As detailed therein, the TransConnect Corporate Manager, Inc. directors and officers may not hold any financial interests in any market participant. The Standards of Conduct extend this prohibition to all "employees and substantially full-time consultants and contractors" of TransConnect, LLC and TransConnect Corporate Manager, Inc.<sup>19</sup>

Consistent with the Commission's safe harbor provision for active ownership by market participants,<sup>20</sup> the Formation Plan and the Certificate of Incorporation provide that an individual market participant, including Applicants to the extent they are market participants, may hold up to five percent of the total Class A stock of TransConnect for a

---

<sup>18</sup> Order No. 2000 at 31,069-71.

<sup>19</sup> The governance documents and Standards of Conduct provide for limited holdings for a six-month transition period, as well as holdings in certain qualified pension or health benefits plans, or if otherwise expressly permitted by the FERC. Holdings of diversified mutual funds (other than those funds concentrating their investments in the electric power industry or the electric utility industry or any segments thereof) are also permitted.

<sup>20</sup> Order No. 2000 at 31,068-71.

period of five years. Additionally, consistent with the Commission's guidance, no class of market participants may hold more than 15 percent of the total Class A shares. After five years, market participants would no longer be allowed to hold any active interest, unless otherwise permitted by the Commission.

## **2. Scope and Regional Configuration**

Applicants believe that combining their systems will provide TransConnect, LLC with significant scope and regional configuration. However, since TransConnect, LLC proposes to operate as part of RTO West, it is the scope and regional configuration of the RTO West that should be measured to support this characteristic. As shown on the map in Attachment A, RTO West would encompass all or a portion of the states of Idaho, Montana, Nevada, Oregon, Utah, Washington, Wyoming, and California, and thus would be of sufficient scope and configuration to permit the RTO to maintain reliability, effectively perform its required functions, and support efficient and non-discriminatory power markets.

## **3. Operational Authority; 4. Short-Term Reliability**

RTO West will have operational authority over all transmission facilities in RTO West. RTO West will be responsible for short-term reliability of the grid that it operates.

TransConnect, LLC does not seek authority to operate transmission facilities or to assume responsibility for the short-term reliability of the grid to a different degree than any other transmission owner in RTO West. The formation of TransConnect, LLC should nonetheless substantially improve the ability of RTO West to undertake both these

responsibilities. For example, RTO West will only need to communicate with a single transmission-owning company when reliability or operational problems occur, rather than six or more. The RTO West filing will elaborate RTO West's responsibilities and intent regarding these characteristics.<sup>21</sup>

## **B. Functions**

Most of the functions required for an RTO in Order No. 2000 will be provided exclusively by RTO West. TransConnect, LLC will, however, share certain functions as further described below.

### **1. Tariff Administration and Design**

TransConnect, LLC will file its own rate schedules within the RTO West tariff. TransConnect, LLC will coordinate with RTO West to ensure its rate schedules are compatible with the administration and rate design ultimately adopted by RTO West. To the extent necessary, any initial filings made by the Applicants or TransConnect, LLC prior to the finalization of RTO West's tariffs will be conformed to the RTO West requirements for tariff administration.

### **2. Congestion Management**

Congestion will be managed by RTO West. By increasing the economies of scale through its combining of smaller systems, TransConnect, LLC should improve the ability of RTO West to implement workable protocols to manage congestion.

### **3. Parallel Path Flow**

This will be managed by RTO West, which will act in coordination with other systems in the Western Systems Coordinating Council.

### **4. Ancillary Services**

Market participants in RTO West may self-supply or acquire ancillary services from third parties in accordance with the rules being developed by RTO West. RTO West will also provide mechanisms to meet its Order No. 2000 "provider of last resort" obligation. The proposed ITC will not be a market participant and does not intend to play a role in ancillary service procurement or provision.

---

<sup>21</sup> System security issues are currently coordinated through the Pacific Northwest Regional Security Coordinator; that arrangement will continue under RTO West.

## **5. OASIS, ATC and TTC**

RTO West will be the single OASIS site administrator for all transmission facilities in RTO West, including those of TransConnect. RTO West will also calculate, with appropriate assistance from participating transmission owners, TTC (Total Transmission Capability) and ATC (Available Transmission Capacity). By coordinating what would otherwise be multiple systems, TransConnect, LLC should improve the ability and efficiency of RTO West's OASIS administration and TTC and ATC calculations.

## **6. Market Monitoring**

RTO West will provide for market monitoring. TransConnect, LLC expects to have no role in performing this function, but will provide data and information as appropriate to the RTO West market monitors.

## **7. Planning and Expansion**

TransConnect, LLC will be actively involved in planning and expansion of its system. Indeed, this is a major, if not the most significant, benefit of an ITC within an RTO. By providing a profit motive for the planning and development of new transmission, transmission will be built efficiently and will be designed to meet the economic needs of the region. In particular, as a for-profit, multi-state ITC, TransConnect, LLC will be uniquely situated to undertake multi-state, regional projects that it expects to yield a compensatory return on its investment consistent with the risks involved. As an independent transmission company, TransConnect, LLC will have the ability to plan its transmission facilities and make additions, modifications and expansions to those facilities. RTO West will have primary responsibility and final decision-making authority over facilities that impact bulk transmission, provided that if TransConnect, LLC requests approval for additions, modifications and expansions of transmission facilities which would not impair the reliability or bulk transmission capability of the RTO West transmission system, such approval shall not be unreasonably delayed or withheld.<sup>22</sup>

RTO West will have the responsibility for planning and ensuring that expansions do not impair reliability or bulk transmission capability. TransConnect, LLC will not supplant RTO West's planning and expansion process, but would supplement it. The benefits of TransConnect, LLC's involvement in this function will accrue not only to TransConnect, LLC's members and TransConnect Corporate Manager, Inc.'s stockholders, but also to RTO West through improvement of the grid and reduced congestion, and to the public through better access to generation supply.

---

<sup>22</sup>A further description of the relationship between transmission owners and RTO WEST with regard to planning is contained in a quotation from the draft RTO West Transmission Operating Agreement in section VI-B, *infra*.

### **8. Interregional Coordination**

RTO West will manage interregional coordination with ISOs, RTOs, and other entities in the West. Another benefit of TransConnect, LLC is its ability to consider and build projects across regional lines, projects that an RTO alone might not undertake because of complex “boundary” or other issues.

#### **C. Open Architecture**

This proposal is entirely consistent with the open architecture requirements of Order No. 2000. The Applicants have been advocates for providing RTO West with the flexibility to evolve into the future. TransConnect, LLC reserves the right to petition the FERC at any time to perform functions other than those identified above, if it determines that it can efficiently perform such other functions without compromising the goals of an RTO as defined by the FERC. TransConnect, LLC also reserves the right to file to exercise the rights granted to any other transmission owner within RTO West. Finally, TransConnect, LLC’s governance documents permit the contribution of additional assets to TransConnect, LLC, thus providing another way that the ITC itself may evolve in coming years.

#### **D. Performance-Based and Innovative Rate Treatments**

The ability to implement the performance-based and innovative rate treatments identified by the Commission is a critical incentive for the Applicants to form this ITC. Applicants anticipate they will make a filing in the first quarter of 2001 that contains a detailed proposal for performance-based and innovative rate treatments consistent with the Commission’s guidelines in Order No. 2000.<sup>23</sup> Applicants recognize that the Commission cannot rule on proposals that have not yet been filed. TransConnect, LLC will ensure its filing for performance-based and innovative rates meets the Commission’s requirements for such filings, including (1) a detailed explanation of how the proposed rate treatment will help achieve the goals of RTOs, including efficient use of and investment in the transmission system and reliability benefits to consumers; (2) a cost-benefit analysis, including rate impacts; and (3) a detailed explanation of why the proposed rate treatment is appropriate.

---

<sup>23</sup> 18 C.F.R. § 53.34(e) (2000). *See also*, Order No. 2000 at 31,191-96; Order No. 2000-A at 31,385-390; *International Transmission Company*, 92 FERC ¶ 61,276 (2000) (conditionally accepting request by an ITC for innovative rate treatment, subject to its joining an RTO).

## OTHER ISSUES

### VI.

#### A. The Proposed ITC/RTO Structure is Consistent with Order No. 2000.

The proposed structure of an ITC within an RTO is consistent with the flexibility provided by the Commission in Order No. 2000. In Order No. 2000, the Commission stated that “[t]he characteristics and functions [of an RTO] could be satisfied by different organization forms, such as ISOs, transcos, combinations of the two, or even new organizational forms not yet discussed in the industry or proposed to the Commission.”<sup>24</sup>. The Commission continued:

We will not limit the flexibility of the proposed structures of forms of organizations for RTOs. We are prepared to accept a transco, ISO, hybrid form, or other form so long as the RTO meets our minimum characteristics and other functions and other requirements.

This Rule does not necessarily require that a single organization perform all the functions itself. . . . We will entertain appropriate tier or other structures. We will require only that the RTO be responsible for ensuring the requirements are met in a way that satisfies our Rule . . . . We welcome innovative structures that meet the needs of the market participants while satisfying the minimum requirements of this Rule.

Order 2000 at 31,036-37 (emphasis added).

TransConnect Corporate Manager, Inc. and TransConnect, LLC will operate within RTO West and thus represents the kind of creative organizational structure contemplated by the Commission.

#### B. TransConnect, LLC will be an Integral Part of RTO West.

Applicants intend TransConnect, LLC to be an integral member of RTO West and have collaborated with others in the Western region to that end. Although TransConnect, LLC would assume ownership of the transmission assets transferred to it from Applicants, the resulting transmission system would be operated by RTO West. As described above, RTO West will perform most of the minimum functions required by Order No. 2000. While TransConnect, LLC will independently seek Commission approval of its rates for each zone, such filing(s) will be made under the RTO West umbrella. RTO West will continue to offer “one-stop shopping” for those seeking transmission service. And, while TransConnect, LLC will perform specified planning and expansion functions in the RTO West area, all such activities will be performed in coordination with RTO West.

---

<sup>24</sup> Order No. 2000 at 30,994 (emphasis added). *See also, Commonwealth Edison Company*, 90 FERC ¶61,192 (2000) (granting declaratory order approving a “binary” RTO structure).

In order to effectuate the hybrid ITC/RTO structure, the following principles, among others, have been jointly agreed to by the RTO West Filing Utilities, and are reflected in the draft RTO West Transmission Operating Agreement (“TOA”):<sup>25</sup>

**12.1.2 Planning by the Executing Transmission Owner.** With respect to facilities owned or otherwise controlled by the Executing Transmission Owner, the Executing Transmission Owner shall have responsibility for planning its Transmission Facilities and for making additions, modifications, and expansions to its Transmission Facilities if the FERC determines that such Executing Transmission Owner is independent from control of market participants or otherwise is entitled to exercise such authority. RTO West shall retain primary planning responsibility and final decision-making authority with respect to RTO West Controlled Transmission Facilities; provided that if the additions, modifications, and expansions to such facilities do not impair reliability or bulk transmission capability of the RTO West transmission System, the requested approval of RTO West shall not be unreasonably delayed or withheld. With respect to facilities owned or otherwise controlled by the Executing Transmission Owner, the Executing Transmission Owner shall have responsibility for planning its Transmission Facilities and for making additions, modifications, and expansions to its Transmission Facilities if FERC determines that such Executing Transmission Owner is independent from control of market participants or otherwise entitled to exercise such authority. RTO-West shall have primary responsibility and final decision-making authority with respect to facilities that impact bulk transmission, provided that if the Executing Transmission Owner with responsibility as provided above requests approval for additions, modifications, and expansions of its Transmission Facilities that do not impair reliability or bulk transmission capability of the RTO-West Transmission System, such approval shall not be unreasonably delayed or withheld.

TOA at 40.

**13.3 Incentive Ratemaking.** With respect to facilities owned or otherwise controlled by the Executing Transmission Owner, the Executing Transmission Owner shall retain the right to unilaterally file at the FERC for modification of its rates and rate recovery mechanisms, including performance-based rates and other incentive-oriented rate recovery

---

<sup>25</sup> Citations to the draft TOA quoted herein are to the version dated October 8, 2000, that was posted on the RTO West web page on October 9, 2000. *See* [http://208.55.67.64/Index\\_Page\\_TOA\\_Drafts.htm](http://208.55.67.64/Index_Page_TOA_Drafts.htm). These quotations are used for illustrative purposes only and should not be viewed as acceptance or endorsement of the draft TOA. As of the date of the instant filing, the TOA remains a work in progress.

mechanisms, if the FERC determines that such Executing Transmission Owner is independent from control of market participants or otherwise is entitled to obtain such recovery. Such rate filings must be designed so as to ensure that they will not lead to unjust, unreasonable, or otherwise unduly discriminatory results for other participants in RTO West. RTO West will conform its tariffs and practices as necessary to ensure collection of such rate recovery mechanisms accepted by the FERC for the Executing Transmission Owner.

TOA at 43.

**22. Open Architecture.** With respect to facilities owned or otherwise controlled by the Executing Transmission Owner, the Executing Transmission Owner shall have the right to unilaterally request approval from the FERC to perform additional regional transmission organization functions and responsibilities reserved by the FERC for performance by entities meeting independence criteria established by the FERC. To the extent such requests are approved by the FERC, this Agreement shall be amended accordingly and the RTO West Tariff and other governing documents shall be amended as required to conform to the new grant of authority or responsibility. If appropriate and necessary to codify the new functions and responsibilities, the Executing Transmission Owner shall submit for FERC approval a separate tariff codifying the functions and responsibilities to be performed by the Executing Transmission Owner on the facilities it owns or otherwise controls. Notwithstanding the most favored nations provisions of Section 3.3 of this Agreement, any other Executing Transmission Owner seeking comparable functions and responsibilities for its facilities shall be required to separately seek such approval from the FERC before receiving comparable functions and responsibilities.

TOA at 71-72.

Reaching agreement on the shared responsibilities between Executing Transmission Owners, such as TransConnect, LLC, and RTO West should help ensure these difficult issues do not delay the finalization of the proposed ITC and RTO West.

### **C. Stranded Cost Recovery**

Section 13.4 of the TOA provides for stranded cost recovery under the RTO framework. In essence, this provision is intended to ensure the recovery of any stranded costs that were recoverable prior to the formation of the RTO. It is important to the financial integrity of the Applicants that their reasonable expectations regarding stranded cost recovery not be diminished by their decision to form the ITC or join RTO West, or the manner in which this goal is accomplished.



#### **D. Retail Access**

RTO West will operate in eight states. Nothing in the instant filing, or the RTO West filing, is intended to limit or alter the authority of the various states over retail access issues. As the Commission's observed in Order No. 2000, "an RTO [should not] interfere with a state's decisions on whether and how fast to implement retail choice within its borders, either through the RTO's Section 205 filing authority or otherwise through the RTO's jurisdictional obligation to provide non-discriminatory and non-preferential transmission service." Order No. 2000 at 31,208. Certain of the Applicants will condition their participation in RTO West on assurances that this limitation will be made part of their agreements with RTO West.

#### **VII. The Road Ahead**

To finalize implementation of the ITC consistent with Order No. 2000, Applicants propose the following schedule:

| <b>Tasks/Milestones</b>  | <b>Start Date</b>            | <b>Target Completion Date</b>             |
|--|------------------------------|---|
| Order No. 2000 Compliance Filing and Petition for Declaratory Order (and Guidance).                      | 10/16/00                     | 12/15/00                                  |
| Prepare Section 205 Rate Case filing.  | 10/16/00                     | 3/31/01                                   |
| File Section 205 Rate Case for each of TransConnect's zones.   | 3/31/01                      | 6/15/01                                   |
| File, as necessary, Requests for Declaratory Order Affirming T & D Split for Applicants with Commission. | Dates To Be Determined (TBD) | TBD                                       |
| File Section 203 Application(s) To Transfer Applicants' Jurisdictional Facilities to TransConnect.       | TBD                          | TBD                                       |
| TransConnect begins operation.   |                              | No later than RTO West commencement date. |

The Applicants will use their best efforts to achieve these milestones and implement the ITC consistent with Order No. 2000. However, given that the milestones are interdependent, in some cases require additional regulatory approvals, and also must be coordinated with the formation and implementation of RTO West, Applicants cannot warranty that they will be accomplished on the specific dates indicated.

**COMMUNICATION**  
**VIII.**

Communications and all filings made in connection with this filing should be directed or addressed to:

Stan Berman  
206-389-4276; sberman@hewm.com  
Todd Glass  
206-389-6142; tglass@hewm.com  
Heller Ehrman White & McAuliffe, LLP  
701 Fifth Avenue, Ste. 6100  
Seattle, WA 98104

Randy Cloward  
509-495-4619; rcloward@avistacorp.com  
Gary Dahlke  
509-455-6000; gdahlke@painehamblen.com  
Avista Corporation  
P.O. Box 3727Spokane, WA 99220-3727

Steve Hawke  
503-464-7720; steve\_hawke@pgn.com  
Doug Nichols  
503-464-8402; douglas\_nichols@pgn.com  
Portland General Electric Company  
121 SW Salmon StreetPortland, OR 97204

Paul Mohler  
202-263-8953; pmohler@hewm.com  
Heller Ehrman White & McAuliffe, LLP  
815 Connecticut Avenue, N.W.  
Suite 200  
Washington, D.C. 20006-4004

Bill Pascoe  
406-497-3541; bpascoe@mtpower.com  
Mike Manion  
406-497-2456; mpmanion@ntpower.com  
Montana Power Company  
40 E. BroadwayButte, MT 59701

Mike Naeve  
202-371-7000; mnaeve@skadden.com  
Skadden, Arps, Slate, Meagher & Flom,  
LLP  
1440 New York Avenue, N.W.  
Washington, D.C. 20005

Gary Porter  
775-834-4879; gporter@sppc.com  
Connie Westadt  
775-834-4196; cwestadt@sppc.com  
Sierra Pacific Resources (and Sierra  
Pacific Power Company and Nevada  
Power Company)  
6100 Neil Road Reno, NV 89511

Kimberly Harris  
425-462-3897; kharri@puget.com  
Puget Sound Energy 411 108th Ave. NE,  
OBC-15 Bellevue, WA 98004-5515

**CONCLUSION**  
**IX.**

WHEREFORE, the Applicants respectfully request the Commission issue a declaratory order finding that (1) the proposed ITC will meet or exceed the minimum requirements for independence; and (2) the limited functions that the ITC proposes to undertake -- related to rate filings and transmission planning and expansion -- are acceptable.

Respectfully submitted,

---

Stan Berman  
Todd Glass  
Heller Ehrman White & McAuliffe, LLP  
701 Fifth Avenue, Ste. 6100  
Seattle, WA 98104

Paul B. Mohler  
Heller Ehrman White & McAuliffe, LLP  
815 Connecticut Ave., N.W., Suite 200  
Washington, D.C. 20006-4004

---

Randall O. Cloward  
Avista Corporation  
P.O. Box 3727Spokane, WA 99220-3727

---

William A. Pascoe  
Montana Power Company  
40 E. BroadwayButte, MT 59701

---

Stephen Hawke  
Portland General Electric Company  
121 SW Salmon StreetPortland, OR 97204

---

Kimberly HarrisPuget Sound Energy411  
108th Ave. NE, OBC-15Bellevue, WA  
98004-5515

---

Gary Porter  
Sierra Pacific Resources (and Sierra  
Pacific Power Company and Nevada  
Power Company)  
6100 Neil RoadReno, NV 89511

October 16, 2000